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BILL ANALYSIS



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Senate Bill 92 (Substitute S-2 as reported)
Sponsor: Senator Raymond E. Basham
Committee: Energy Policy and Public Utilities

(as passed by the Senate)

Date Completed: 10-30-07

RATIONALE

Part 121 of the Natural Resources and Environmental Protection Act governs the handling of liquid industrial waste, and provides for enforcement by the Department of Environmental Quality (DEQ). Liquid industrial waste includes, for example, used oil, sanitary sewer clean-out residue, and grease trap residue, as well as liquid waste that results from industrial, commercial, or governmental activity. Part 121 imposes specific requirements on those who generate, transport, or store liquid industrial waste. Transporters, in particular, are subject to requirements for manifests and vehicle decontamination, the licensing requirements of Part 121 and Part 117 (Septage Waste Servicers), and the registration and permit requirements of the Hazardous Materials Transportation Act. Part 121 does not apply, however, to certain materials that are excluded from the definition of "liquid industrial waste".

It has been suggested that additional exceptions be made to accommodate the transportation of several types of material that will be converted to biofuel. In particular, these involve the grease that accumulates in restaurants' sink traps, a liquid byproduct of ethanol production, and food processing residuals.

CONTENT

The bill would amend Part 121 (Liquid Industrial Waste) of the Natural Resources and Environmental Protection Act to do the following:

-- Provide that a liquid vegetable or animal fat oil used to produce

biofuel, and food processing residuals or approved site- or source-separated material decomposed for the production of biogas, would not be liquid industrial waste when managed as specified.

- Revise several existing exceptions from the definition of "liquid industrial waste".**
- Prohibit the storage of liquid industrial waste for longer than one year, except for purposes of reclamation.**
- Revise several requirements concerning generators and transporters of liquid industrial waste.**
- Revise provisions concerning action that must be taken in the event of a discharge or spill of liquid industrial waste.**

Exemptions

Part 121 defines "liquid industrial waste" as any brine, byproduct, industrial wastewater, leachate, off-specification commercial chemical product, sludge, sanitary sewer clean-out residue, storm sewer clean-out residue, grease trap clean-out residue, spill residue, used oil, or other liquid waste that is produced by, is incident to, or results from industrial, commercial, or governmental activity or any other activity or enterprise determined to be liquid by a specific paint filter liquids test, and that is discarded. Liquid industrial waste does not include particular types of waste, liquid, or material described in Part 121.

The bill also would exclude from the definition of "liquid industrial waste" material managed in accordance with Section 12102a, which the bill would create. That section describes materials that would not be liquid industrial waste when managed as specified.

Under Section 12102a, liquid industrial waste would not include a liquid vegetable or animal fat oil that was transported directly to a biofuel producer for the purpose of converting the oil to biofuel. ("Biofuel" would mean any renewable liquid or gas fuel offered for sale as a fuel that is derived from recently living organisms or their metabolic byproducts and meets applicable quality standards, including ethanol, ethanol-blended fuel, biodiesel, and biodiesel blends.)

Also, food processing residuals as defined in Section 11503, or site-separated material or source-separated material approved by the DEQ under Part 115 (Solid Waste Management), that were decomposed for the purpose of producing biogas that could be converted to energy, would not be liquid industrial waste. The decomposition would have to occur in a controlled manner using a closed system that complied with Part 55 (Air Pollution Control) to create and maintain anaerobic conditions. (The bill would define "biogas" as a biofuel that is a gas. Section 11503 defines "food processing residuals" as residuals of fruits, vegetables, aquatic plants, or field crops; otherwise unusable parts of fruits, vegetables, aquatic plants, or field crops from the processing of those items; and otherwise unusable food products that do not meet size, quality, or other product specifications and that were intended for human or animal consumption.)

In addition, liquid industrial waste would not include a liquid residue remaining in a container after pouring, pumping, aspirating, or another practice commonly employed to remove liquids had been used, if one of the following applied:

- Not more than one inch of residue remained on the bottom.
- For containers less than or equal to 110 gallons in size, not more than 3% by weight of residue remained in the container.

- For containers larger than 110 gallons, not more than 0.3% by weight of residue remained in the container.

The liquid residue would become subject to Part 121 when discarded.

Also, a residual amount of liquid remaining in a container and generated as a result of transportation of a solid waste in that container, would not be liquid industrial waste when managed as specified.

The bill also would exclude from the definition of "liquid industrial waste" a liquid regulated under Public Act 239 of 1982 (which governs the disposal of dead animals).

The current definition exempts a liquid industrial waste used for land application in accordance with a program for effective residuals management, approved by the DEQ Director or the U.S. Environmental Protection Agency (EPA), or both, pursuant to the Federal Water Pollution Control Act. The bill would delete that exemption as well as a provision allowing the DEQ to authorize land application of liquid industrial waste in accordance with such a program. Under proposed Section 12102a, liquid industrial waste would not include a liquid or a sludge and associated liquid authorized to be applied to land under Part 31 (Water Resources Protection) or 115 (Solid Waste Management).

The current definition also excludes oil field brines used for public road dust control and ice removal as authorized under the terms of the rules, standards, and brine management plan approved by the DEQ in existence on June 1, 1993, until rules are promulgated. The bill would delete that language but would exclude a liquid brine authorized for use as dust and ice control regulated under Part 31 (Water Resources Protection) and Part 615 (Supervisor of Wells).

In addition, the current definition excludes a used oil that is directly burned to recover energy or used to produce a fuel if specific conditions are met. Among other things, the material must meet the used oil specifications of Part 111 (Hazardous Waste Management). The bill would refer, instead, to the used oil specifications of R 299.9809(1)(f) of the Michigan

Administrative Code. (Rule 299.9809 describes materials that are subject to regulation as used oil under administrative rules; subsection (1)(f) concerns used oil that is burned for energy recovery and any fuel produced from used oil by processing, blending, or other treatment if it exceeds any of the used oil specifications identified in the rule.)

Storage

The bill would prohibit the owner or operator of a designated facility from storing liquid industrial waste for longer than one year unless the waste were being stored for purposes of reclamation and at least 75% of the cumulative amount, by weight or volume, of each type of liquid industrial waste that was stored on site each calendar year were reclaimed or transferred to a different site for reclamation during that year. The owner or operator of a designated facility would have to maintain documentation demonstrating compliance with this requirement.

(Part 121 defines "designated facility" as a treatment, storage, disposal, or reclamation facility that receives liquid industrial waste from off-site.)

Generators

Part 121 imposes certain requirements on a generator, which is a person whose act or process produces liquid industrial waste. Among other things, a generator must obtain and use a site identification number assigned by the EPA or the DEQ. Under the bill, this would be required when needed for transportation.

If transporting liquid industrial waste, a generator must engage, employ, or contract for the transportation with a transporter registered and permitted under the Hazardous Materials Transportation Act. Under the bill, this would not apply when a generator was transporting its own waste.

A generator transporting its own waste in quantities of 55 gallons or less is not subject to manifest requirements if various requirements concerning records and receipts are met, and if the designated facility is managed in accordance with Part 121. The bill would delete the requirement

that the facility be managed in accordance with Part 121.

Transporters; Vehicles

A transporter is a person engaged in the off-site transportation of liquid industrial waste by air, rail, highway, or water. A transporter registered and permitted in accordance with the Hazardous Materials Transportation Act and Part 117 (Septage Waste Servicers) is subject to various requirements under Part 121.

The bill specifies that a transporter would be subject to the registration and permitting requirements of the Hazardous Materials Transportation Act. The requirements of Part 121 would apply to a transporter registered and permitted under that Act and licensed under Part 117.

Currently, septage waste or liquid industrial waste transported by the permit or license holder may not be disposed of on land. Under the bill, the prohibition would apply to septage waste or liquid industrial waste transported in a vehicle managed under Parts 117 and 121.

Currently, all liquid waste, including septage waste, must be manifested pursuant to requirements of Part 121. Under the bill, the manifest requirements would apply to all waste, including septage waste, transported in a vehicle managed under Parts 117 and 121.

Under Part 121, the words "Land Application Prohibited" must be affixed in a conspicuous location, visible on both sides of the vehicle, and clearly legible during daylight hours from a distance of 50 feet. The bill would delete this legibility requirement, and would require the words to be in least two-inch letters. The bill also would refer to a vehicle used to transport waste under Parts 117 and 121.

Under Part 121, all portions of a vehicle or equipment that have been in contact with liquid industrial waste must be cleaned and decontaminated before the transport of any products, incompatible waste, or nonwaste. The bill also would refer to hazardous waste regulated under Part 111, and "other" material rather than "nonwaste" material.

A transporter who owns or legally controls a vehicle or equipment must maintain documentation that the vehicle or equipment was decontaminated before its use for the transportation of nonwaste or a product. Under the bill, this would apply to the transportation of any products, incompatible waste, hazardous waste regulated under Part 111, or other material.

Waste Discharge or Spill

Under Part 121, if there is a fire, explosion, or discharge of liquid industrial waste that could threaten the public health, safety, and welfare, or the environment, or when a generator, transporter, or owner or operator of a designated facility has knowledge that a spill has reached surface water or groundwater, the generator, transporter, or owner or operator must take appropriate immediate action to protect the public health, safety, and welfare, and the environment, including notification of local authorities and the Pollution Emergency Alerting System.

Under the bill, the notification would be required unless the incident were reported under another State law. In addition, a generator, transporter, or owner or operator of a designated facility would have to take action if it had "first" knowledge that a spill had reached water.

Part 121 also requires the generator, transporter, or owner or operator to prepare and maintain a written report documenting the incident and response action taken, including any supporting analytical data. Under the bill, the report also would have to document cleanup activities.

MCL 324.12101 et al.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The proposed exception for vegetable or animal fat oil would accommodate a project being undertaken at Western Michigan University, "Bronco Biodiesel". This involves the collection of area restaurants' trap grease, which accumulates under commercial kitchen sinks and is discharged

into municipal sewer lines if the traps are not properly maintained. According to a representative of the university, the trap grease is taken to the Kalamazoo Wastewater Reclamation Plant for the production of biodiesel, which is used to help fuel the city's bus fleet.

Biodiesel can be made from any fat or oil, burns more completely than petroleum diesel, and emits fewer noxious byproducts. In addition, compared with petroleum diesel, the superior lubricity of biodiesel can reduce engine maintenance costs, and it is safer to use and transport, according to a *WMU News* article (10-19-06).

Because trap grease is considered liquid industrial waste under Part 121, those who haul it are subject to all of the transporter requirements of that part. By creating an exemption for this type of material when it is used to produce biofuel, the bill would enable Bronco Biodiesel--and other projects like it--to go forward without being subject to unnecessary regulations. Promoting the production of biodiesel from used cooking oil not only would generate financial benefits but also would help build a sustainable environment.

Supporting Argument

The use of ethanol-blended fuel is on the rise in the United States, including Michigan. A mixture of conventional gasoline and alcohol, ethanol-blended fuel is clean-burning and reduces the reliance on petroleum. Most ethanol in the United States is made from corn, but it also can be produced from other crops grown in Michigan, including sugar beets, as well as food processing waste. According to the Michigan Agri-Business Association, there currently are five operating ethanol producers in Michigan.

The ethanol production process results in a nonhazardous liquid residue called syrup, which can be used for purposes of animal feed or methane digestion. If the syrup is used for animal feed, it falls under an existing exemption to the definition of "liquid industrial waste", and therefore can be transported by a hauler that is not subject to the regulations of Part 121. On the other hand, this exemption does not apply if a material is used to produce a fuel. Thus, ethanol syrup must be hauled by a transporter that complies with Part 121 if it

is taken to a methane digester, where organic material is decomposed and used to produce biogas, which can be used to generate heat or electricity.

By creating a new exemption for food processing residue or approved site- or source-separated material that is decomposed for the purpose of producing biogas, the bill would benefit the agribusiness industry in Michigan, including the farmers who grow the crops, the ethanol producers, and the facilities that operate methane digesters. At the same time, the bill would help Michigan contribute to the production and use of alternative fuels.

Supporting Argument

Public Act 239 of 1982 and rules promulgated under it govern the handling of dead animals, as well as the transportation of animal carcasses and vehicles used for this purpose. Since these regulations are in place, the bill would make it clear that Part 121 would not also apply to liquids regulated under the other statute.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on local government if it resulted in more or fewer violations of Part 121. There are no data to indicate how many offenders have been convicted of misdemeanors for violating this part. To the extent that the bill resulted in increased convictions or incarceration time, local governments would incur increased costs of misdemeanor probation and incarceration in local facilities, which vary by county. Additional penal fine revenue would benefit public libraries.

The bill would have no fiscal impact on the Department of Environmental Quality.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.